

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nathaniel Flack	Team: Squad #5	CCRB Case #: 201704663	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 06/04/2017 2:30 PM	Location of Incident: § 87(2)(b)	Precinct: 13	18 Mo. SOL 12/4/2018	EO SOL 12/4/2018	
Date/Time CV Reported Fri, 06/09/2017 8:09 PM	CV Reported At: Precinct	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 06/09/2017 8:09 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Jocelyn Peralta	1767	930927	013 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christophe Mcneely	23479	954121	013 PCT
2. POM Michael Cangelosi	04586	950152	013 PCT
3. POF Judith James	23599	960721	013 PCT
4. POF Samantha Williams	29420	954428	013 PCT
5. POM Joseph Droge	01478	951696	013 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Jocelyn Peralta	Abuse: Sergeant Jocelyn Peralta entered and searched § 87(2)(b) in Manhattan.	§ 87(2)(b)
B.SGT Jocelyn Peralta	Abuse: Sergeant Jocelyn Peralta damaged § 87(2)(b)'s property.	§ 87(2)(b)
C.SGT Jocelyn Peralta	Abuse: Sergeant Jocelyn Peralta removed § 87(2)(b) to the hospital.	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint via the CCRB call processing system on June 9, 2017.

On June 4, 2017, at approximately 2:30 pm, Sgt. Jocelyn Peralta, PO Michael Cangelosi, PO Christopher McNeely, PO Judith James, and PO Samantha Williams, all of the Midtown South Precinct, responded to § 87(2)(b)'s apartment at § 87(2)(b) in Manhattan, in response to a 911 call by § 87(2)(b)'s son, § 87(2)(b). § 87(2)(b) reported that his mother was not answering the door and had a "mental history." When § 87(2)(b) did not respond to Sgt. Peralta's attempts to make contact through the door, Sgt. Peralta reportedly requested that ESU respond to forcibly enter the apartment (**Allegation A**). When ESU arrived and began to do so, they allegedly removed the peephole from § 87(2)(b)'s door (**Allegation B**). § 87(2)(b) opened the door and was placed in handcuffs. Sgt. Peralta brought § 87(2)(b) back inside the apartment to get dressed, during which time officers allegedly looked behind internal doors and monitored § 87(2)(b)'s movements (**Allegation A, continued**). § 87(2)(b) was removed to § 87(2)(b) (**Allegation C**) and released several hours later following a determination that she was not a danger to herself or others.

This case is being submitted more than 90 days after it was assigned due to Sgt. Peralta's repeated interview scheduling conflicts over a period of four weeks.

No video footage was available for this incident.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint in which § 87(2)(b) or § 87(2)(b) is involved (Board Review 01).
- Sgt. Peralta has been a subject of four prior allegations in three prior CCRB complaints. None of the allegations was substantiated, § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) rejected mediation.
- As of October 17, 2017, no Notice of Claim regarding this incident has been filed with the Office of the Comptroller (Board Review 17).
- § 87(2)(b), § 87(2)(c)

Potential Issues

- § 87(2)(b) provided a phone statement (Board Review 03) but did cooperate with attempts to obtain a verified statement.

- § 87(2)(b) provided limited medical records pertaining to the incident (Board Review 04) but declined to sign HIPAA release forms allowing the CCRB greater access to medical records for the incident.

Findings and Recommendations

Allegations Not Pleaded

- § 87(2)(g)
- While § 87(2)(b) said that PO Cangelosi or PO McNeely said during the incident that there would be “problems” for him if they had to return to the apartment, § 87(2)(b) did not provide a sworn statement and § 87(2)(b) did not make this allegation on his behalf in her sworn statement. § 87(2)(g)

Subject Officer Identification

- Given that Sgt. Peralta (Board Review 07) was the highest ranking officer on the scene and acknowledged making the decision enter the apartment and remove § 87(2)(b) to the hospital, the entry, search, and removal allegations are being pleaded solely against Sgt. Peralta. Similarly, because the removal of § 87(2)(b)'s peephole was alleged to have occurred in the course of the entry ordered by Sgt. Peralta, the property damage allegation is also pleaded against Sgt. Peralta.

Allegation A – Abuse of Authority: Sergeant Jocelyn Peralta entered and searched § 87(2)(b) in Manhattan.

Allegation C – Abuse of Authority: Sergeant Jocelyn Peralta removed § 87(2)(b) to the hospital.

It is undisputed that § 87(2)(b) called 911 (Board Review 22) regarding his mother, § 87(2)(b) after he was unable to gain access to her apartment. Based on the information provided by § 87(2)(b) a 911 dispatcher put over the radio that there was an EDP who is “violent, unknown weapons at this time,” inside of § 87(2)(b). The Radio Communications (Board Review 08) and Event Documents (Board Review 09) indicate that Sgt. Peralta was informed that § 87(2)(b) was not opening the door. It is undisputed that Sgt. Peralta, her operator PO Droge (Board Review 10), PO Cangelosi (Board Review 11), PO McNeely (Board Review 12), PO James (Board Review 13), and PO Williams (Board Review 14) responded to the scene.

It is undisputed that when officers arrived on scene, § 87(2)(b) met them and provided additional information. § 87(2)(b) indicated that he solely told the officers that § 87(2)(b) was not mentally sound and that she had previously been taken to § 87(2)(b) after keying someone's car. § 87(2)(g)

§ 87(2)(b) Sgt. Peralta testified that § 87(2)(b) indicated that § 87(2)(b) had access to a knife, that she was trying to kill herself, that he believed this because she was refusing to open the door, and that § 87(2)(b) had previously tried to harm herself. PO Droge did not recall § 87(2)(b) saying anything about § 87(2)(b)'s mental health or anything suggesting that she

was a danger to herself or others. PO James said that § 87(2)(b) “said he was worried that she might [harm herself], not that she has,” and that § 87(2)(b) “wasn’t specific.” PO Williams was consistent with PO Droge that § 87(2)(b) did not say anything about § 87(2)(b)’s mental history or condition. PO McNeely said that § 87(2)(b) said § 87(2)(b) “smokes drugs,” but he learned no further details, and no other officer mentioned this. Two Domestic Incident Reports prepared regarding the incident (Board Review 15 and Board Review 16) indicate that § 87(2)(b) called the police because his mother wasn’t answering the door and was worried she might hurt herself, and that § 87(2)(b) reported that EMS had taken her multiple times in the past for psychological evaluations.

It is undisputed that § 87(2)(b) did not initially open the door. Solely Sgt. Peralta reported that there were strange decorations on the door. Solely PO Cangelosi indicated that anything could be heard from inside the apartment while they were outside. The radio communications show that Sgt. Peralta called ESU to forcibly enter the apartment and classified the job as a Barricaded EDP. Upon arriving, unidentified officers from ESU removed the peephole of the front door as they prepared to forcibly enter the apartment, at which point § 87(2)(b) opened the door and was immediately placed in handcuffs.

It is undisputed that § 87(2)(b) was unharmed. It is undisputed that § 87(2)(b) was wearing headphones and a bathing suit and that she claimed that she had not heard the officers’ knocking, with the exception of PO Williams, who said that § 87(2)(b) was wearing a costume with feathers. Solely Sgt. Peralta claimed that § 87(2)(b)’s hands were dirty. It is undisputed that § 87(2)(b) claimed that § 87(2)(b) had called 911 to jeopardize her case in a pending custody proceeding, and that she did not wish § 87(2)(b) to enter the apartment. Sgt. Peralta, and no other officer, said that § 87(2)(b) said that she wished that § 87(2)(b) was dead, but it is undisputed she did not threaten to kill § 87(2)(b).

§ 87(2)(b) said that a pair of unidentified officers entered the apartment’s bedrooms and looked behind the doors with flashlights and that an officer followed her into the bathroom while she prepared to leave, but no officer recalled entering or searching any rooms within the apartment. It is undisputed that no compartments were searched. Sgt. Peralta acknowledged putting away a knife that was out in the kitchen and a pair of scissors by the door when she entered, and Sgt. Peralta also said that ESU briefly “cleared the path” by looking around the apartment before leaving, though Sgt. Peralta could not actually see them do this because she had not yet entered the apartment. Sgt. Peralta observed § 87(2)(b) through the door of her bedroom while she dressed herself.

Sgt. Peralta testified that she removed § 87(2)(b)’s handcuffs after § 87(2)(b) calmed from the initial shock of the entry and handcuffing, and § 87(2)(b) proceeded to explain her problems with her son in a cogent manner. It is undisputed that based on § 87(2)(b)’s statements, Sgt. Peralta barred § 87(2)(b) from entering the apartment and advised him to go to court, if he wanted to access the apartment.

Sgt. Peralta testified that based on the totality of the circumstances—that the job came over as a violent EDP; that § 87(2)(b) said that § 87(2)(b) had a mental history, a history of self-harm, and that he feared she was harming herself; that § 87(2)(b) said she wished her son was dead; that there were strange decorations on the door; that § 87(2)(b) did not initially answer

the door; that § 87(2)(b) was wearing a swimsuit and had dirty hands; and that § 87(2)(b) was upset when she was placed in handcuffs—she determined that § 87(2)(b) was an EDP.

No officer testified that § 87(2)(b) resisted being handcuffed, engaged in any violent behavior, or made any threats.

It is undisputed that Sgt. Peralta determined that § 87(2)(b) needed to be removed to the hospital. Sgt. Peralta testified that the decision was a precaution, and that it would allow § 87(2)(b) to “prove to the doctor that she’s okay.” It is undisputed that § 87(2)(b) did not wish to be removed to the hospital, but that she was forced to go.

§ 87(2)(b) was evaluated at the § 87(2)(b) psychiatric emergency room. The evaluation concluded that § 87(2)(b) was not a danger such that she could be admitted to the hospital, and she was released the same day she was evaluated.

Officers may enter a home under the emergency circumstances exception when they have a reasonable basis to believe that there is an immediate need for their assistance for the protection of life or property. The requirement of reasonable grounds to believe that an emergency existed must be applied by reference to the circumstances then confronting the officer, including the need for a prompt assessment of sometimes ambiguous information concerning potentially serious consequences. People v Rodriguez, 77 A.D.3d 280 (Board Review 18). Officers may conduct a protective sweep of an apartment to ensure that there are no weapons within the grabbable area of a person being taken into custody, if there are articulable facts leading to a belief that the person poses a threat. United States v. Hernandez, 941 F.2d 133 (Board Review 19).

A uniformed member of the service may take a person into protective custody and remove them to a hospital in an ambulance when they reasonably believe that the person is apparently mentally ill or emotionally disturbed and is conducting themself in a manner likely to result in a serious injury to themself or others. Damaging of property would not necessarily constitute an immediate threat of serious physical injury or death. The highest ranking uniformed police supervisor at the scene is in command and will coordinate police operations. PG 221-13 (Board Review 20).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

It is undisputed that Sgt. Peralta determined during the incident, and prior to § 87(2)(b)'s removal to the hospital, that § 87(2)(b) had legitimate reasons for refusing § 87(2)(b) entry to the apartment, which refusal was, by all accounts, the impetus for the 911 call and the basis for § 87(2)(b)'s reported belief that § 87(2)(b) could be harming herself. § 87(2)(b)'s discharge papers indicate that she was not conducting herself in a manner likely to cause serious injury to herself or others.

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority: Sgt. Peralta damaged § 87(2)(b)'s property.

§ 87(2)(b) said in her interview that when she was removed from her apartment, she noticed that the peephole of her door had been removed, which she assumed had been done by an officer who was holding a pickaxe. § 87(2)(b) did not mention this allegation in her phone statement or initial written statement.

All officers interviewed denied any knowledge of § 87(2)(b)'s peephole being removed or her door being damaged in any way.

Under the emergency exception to the warrant requirement, officers may remove the peephole of a door prior to entering as a means of assessing a situation or convincing someone to leave an apartment, a less intrusive step than the entry itself. People v. Guzman, 746 N.Y.S.2d 481 (Board Review 21).

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Squad: 5

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date